

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer for acquired lands. ES-29813.

Affirmed.

1. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases:
Lands Subject to -- Oil and Gas Leases: Noncompetitive Leases

BLM must reject a noncompetitive oil and gas lease offer for acquired lands already included in an outstanding lease.

APPEARANCES: Zoe C. Schluter, pro se; Kenneth G. Lee, Esq., Office of the Solicitor, U. S. Department of the Interior, Alexandria, Virginia, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Zoe C. Schluter has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated February 19, 1985, rejecting her noncompetitive oil and gas lease offer for acquired lands, ES-29813.

On August 28, 1981, appellant filed her lease offer for certain acquired land situated in Rapides County, Louisiana, within the Kisatchie National Forest, pursuant to section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1982). In its February 1985 decision, BLM rejected appellant's lease offer because the land was within an outstanding lease, ES-20166, issued effective June 1, 1982, to Sharon and Wilfred Plomis.

In her statement of reasons for appeal, appellant contends that the lease should be awarded to her "in a spirit of equity" due to the fact that appellant was assured on two occasions by BLM employees that the "parcel was available for lease subject to clearance by the Forest Service."

In response to appellant's statement of reasons, BLM submits the June 17, 1985, affidavit of James P. Horan, one of the BLM employees who spoke to appellant, which explains the "procedures followed by [BLM] in processing oil and gas lease offers during 1982 and early 1983." Mr. Horan states that, at the time BLM communicated with appellant about the status of her lease offer, BLM had agreed with the Forest Service, U.S. Department of Agriculture,

that status inquiries would be directed to the Forest Service where, as in this case, the offer was for land within a national forest. Mr. Horan also recalls his conversation with appellant, in which he stated that "there appeared to be no reason to disqualify the offer but that the Forest Service could provide more information as to status."

[1] It is well established that a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, 30 U.S.C. § 226(c) (1982). A junior offer is properly rejected to the extent it includes land described in a senior offer and subsequently leased to the senior offeror if the junior offeror fails to establish the senior offer is defective. Charles E. Shaw, 81 IBLA 347 (1984). In the present case, appellant's lease offer entirely covered land already embraced in noncompetitive oil and gas lease offer ES-20166, filed with BLM on November 28, 1978, prior to the filing of appellant's lease offer. ^{1/} That lease was issued effective June 1, 1982. We can find nothing in the case file with respect to lease ES-20166 to indicate it was not issued to the first-qualified applicant.

On appeal, appellant claims that she was misled by BLM employees regarding the availability of the land for leasing to her. BLM maintains that appellant was informed that the Forest Service had the final word on the availability of the land. Indeed, appellant states that she was informed by BLM that the "parcel was available for lease subject to clearance by the Forest Service." (Emphasis added.) The record indicates that BLM was not aware that the land was included in lease ES-20166 until January 1, 1985. An "Oil and Gas PreAdjudication Checklist," dated September 23, 1981, and prepared by BLM, does not indicate the availability of the land. There is a notation, however, on the checklist which reads: "[T]itle request sent to FS [Forest Service] 7/28/82." On January 1, 1985, the Forest Service responded by memorandum, stating: "Our records indicate all the lands requested by the subject offer leased under ES-20166 effective June 1, 1982."

Even assuming that BLM employees erroneously informed appellant that the land was available for leasing to her, there is no legal authority to cancel lease ES-20166 and issue a lease to appellant. Although this Board has recognized the Department may, in certain limited circumstances, be equitably estopped to rescind or deny action taken upon which a party has reasonably relied to its detriment, Francis X. Furlong, 73 IBLA 67 (1983), this cannot alter the statutory obligation to issue noncompetitive leases to the first-qualified applicant. 30 U.S.C. § 226(c) (1982). Further, one of the prerequisites for invocation of the doctrine of equitable estoppel is that the party asserting the estoppel is ignorant of the material facts. It appears appellant was already aware that the land in appellant's lease offer

^{1/} We note that appellant's lease offer purported to cover 730 acres of acquired land. However, the land described in the offer totals only 570 acres. The only difference between appellant's lease offer and lease ES-20166 is that the lease also includes 160 acres in the SW 1/4 sec. 35, T. 2 N., R. 2 W., Louisiana Meridian, Rapides County, Louisiana.

was included in an outstanding offer to lease. 2/ Moreover, we cannot say that appellant acted in reliance on BLM action to her detriment. See Schweiker v. Hansen, 450 U.S. 785 (1981). In fact, appellant took no action in reliance on the purported erroneous BLM advice. Her lease offer had already been submitted.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

R. W. Mullen
Administrative Judge

2/ In the Aug. 26, 1981, cover letter which accompanied the submission of appellant's lease offer, appellant stated in part that she was applying for a parcel which had been assigned serial number "ES-20166."

